

*Application No. 09/925562*  
*Page 12*

*Response*  
*Attorney Docket No. S63.2N-8429-US03*

**Remarks**

This Response is in reply to the Office Action dated March 29, 2006. The Office Action: 1) rejected previously allowable claims 51-59 as being read on by US 5,776,161 (hereinafter Globerman) and US 6,348,065 (hereinafter Brown), 2) requested clarification regarding the status of previously withdrawn claims in light of the rejection of the previously allowable claims 51-59, 3) rejected claims 34-36 under 35 USC §102(e) as being anticipated by US 5,449,373 (hereinafter Pinchasik), 4) rejected claims 39-43, and 47 under 35 USC §102(e) as being anticipated by Pinchasik, 5) rejected claim 47 under 35 USC §102(e) as being anticipated by Pinchasik, 6) rejected claim 62 under 35 USC §102(e) as being anticipated by Globerman, 7) rejected claims 51-57 and 59 under 35 USC §102(e) as being anticipated by Globerman, 8) rejected claims 51, 52, 54, 55, and 57-59 under 35 USC §102(e) as being anticipated by Brown, 9) rejected claims 49 and 50 under 35 USC §103(a) as being unpatentable over Pinchasik in view of US 6,156,052 (hereinafter Richter), 10) requested per MPEP §§ 714.02 and 2163.06 that any amendments to the disclosure including the claims should have their support specifically pointed out, 11) requested a list of all co-pending applications that set forth similar subject matter to the present claims, and, 12) requested a list of all co-pending claims of all co-pending applications that set forth similar subject matter to the present claims if the co-pending applications are not stored in the IFW (image format) system or are unpublished. The following comments are presented in the same order as in the Office Action with section numbers corresponding to the above enumeration.

**1. Rejection of Previously Allowable Claims**

The rejection of previously allowed claims 51-59 are addressed according to the appropriate cited references together with the previously rejected claims rejected by those same references. A substantive rebuttal of the rejection of claims 51-57 and 59 is made in Sections 7 and 8 of the Remarks. A substantive rebuttal of the rejection of claim 58 is also made in Section 8.

**2. Request for clarification of previously withdrawn claims**

The Office Action requested a clarification of the status of previously rejected claims 34-36, 47, 49, 50, and 62. In Applicant's previous communication, Applicant stated that although the validity of the rejections were in dispute, Applicant was willing to withdraw the

*Application No. 09/925562*  
*Page 13*

*Response*  
*Attorney Docket No. S63.2N-8429-US03*

rejected claims in reliance of and to better facilitate the allowance of claims 51-59. In light of the unexpected change in status of claims 51-59, Applicant clarifies that with the exception of claims 39-43, and 62, these previously rejected claims are pending and addresses the specific rejections levied against them in other Sections of the Remarks. Applicant is withdrawing claims 39-43, and 62 from consideration.

**3. 35 USC §102(e) Rejection of claims 34-36 based on Pinchasik**

The Office Action rejected base claim 34 under 35 USC §102(e) as being anticipated by Pinchasik. Specifically the Office Action stated that Pinchasik FIGs. 2A-2C discloses connecting struts (referred to as links (112) in the Office Action) connecting strut pairs (102) of strut columns which are closer to one strut of the strut pair (the top strut) than to any other one strut. Although Applicant does not concede that portions of the connecting struts in Pinchasik are closer to one strut than to any other strut, even if this were the case, Pinchasik does not disclose the embodiments described by claims 34-36.

Base claim 34 describes *ends* of the connecting struts (not the struts as a whole) which are closer to one strut of the pair than to any other strut. In contrast, Pinchasik FIGs. 2A-2C as well as 3A-3C illustrates ends of the connecting columns positioned evenly between the two struts of the strut pair. No where in either the specification or drawings of Pinchasik is there any disclosure teaching the positioning of the ends of the connecting struts as in base claim 34 and in its dependent claims.

**4. 35 USC §102(e) Rejection of claims 39-43 based on Pinchasik**

The Office Action rejected claims 39-43 as being anticipated by Pinchasik. Although applicant disputes the basis for this rejection, in the interest of assisting Examiner in facilitating the prosecution of this application, Applicant is withdrawing this claim from consideration. Applicant reserves the right to prosecute the embodiments of these claims in a future continuation application claiming priority from this application and/or any appropriate earlier applications.

**5. 35 USC §102(e) Rejection of claim 47 based on Pinchasik**

The Office Action rejected claims 47 as being anticipated by Pinchasik for the same reason as mentioned in Section 3 of this Response. This rejection is in error as well for reasons similar to those mentioned in Section 3. Unlike in claim 47, Pinchasik does not disclose

*Application No. 09/925562*  
*Page 14*

*Response*  
*Attorney Docket No. S63.2N-8429-US03*

a connecting strut extending between a first location and a second location in which each of the locations (not the connecting strut as a whole) are closer to the one of the expansion struts of a strut pair than to any other expansion strut.

**6. 35 USC §102(e) Rejection of claim 62 based on Globerman**

The Office Action rejected claims 62 as being anticipated by Globerman. Although applicant disputes the basis for this rejection, in the interest of assisting Examiner in facilitating the prosecution of this application, Applicant is withdrawing this claim from consideration. Applicant reserves the right to prosecute the embodiments of claim 62 in a future continuation application claiming priority from this application and/or any appropriate earlier applications.

**7. 35 USC §102(e) Rejection of claim 51-57 and 59 based on Globerman**

The Office Action rejected claims 51-57 and 59 under 35 USC §102(e) as being anticipated by Globerman. Specifically the Office Action stated that because a line can be drawn across any first expansion strut and any second expansion strut of the stent in Globerman the two are collinear. Globerman however does not disclose a second expansion strut collinear with a first expansion strut according to the definition of collinear provided in the specification.

Applicant respectfully notes that rather than the dictionary definition of "collinear", the definition provided in the specification should have been used to construe these claims. This is because an applicant is entitled to be his or her own lexicographer (*See In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671 as well as MPEP § 2173.05(b)) because the specification is what gives meaningful notice to the public, and because dictionaries have multiple meanings which may not provide clear or consistent meaning to the claims. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005).

Applicant respectfully notes that the term "collinear" is defined in FIG. 4B and in page 6 paragraph 0089 in published application 20020062149A1. In this definition it is explained that "collinear" means to extrapolate an axis along the exact linear path of a referenced straight body to indicate the location of a second straight body. In FIG 4B a linear section and a joining strut are collinear only because a single axis traverses both the linear path of joining strut and the linear path of the linear section. Unlike in claims 51, 52, 54, 55, and 57 the first and second struts of the first and second strut pairs in Globerman are not collinear because they do

**Application No. 09/925562**  
**Page 15**

**Response**  
**Attorney Docket No. S63.2N-8429-US03**

not share the same extrapolated linear path.

**8. 35 USC §102(e) Rejection of claims 51, 52, 54, 55, and 57-59 based on Brown**

(a) Claims 51, 52, 54, 55, and 59: The Office Action rejected claims 51, 52, 54, 55, and 57-59 under 35 USC §102(e) as being anticipated by Brown. Although Brown does disclose a connector extending between two expansion columns, for the same reason mentioned in Section 7 of this Response, Brown does not disclose the first strut of a first strut pair being collinear with the second strut of a second strut pair. This is the case for two reasons:

(b) Claim 59: Claim 59 is not disclosed by Brown for the reasons previously indicated in section 8(a). In addition, claim 59 is not anticipated by Brown because unlike in Brown, claim 59 describes a connector having a curved portion. In Brown the connectors are straight and lack curved portions (See Brown FIGs. 1-4). In fact Brown describes the connectors as being parallel and makes no mention or suggestion of the connectors having curved portions. (See Brown, Col. 3, lines 30-32).

**9. 35 USC §103(a) Rejection of claims 49 and 50 based on Pinchasik with Richter**

The Office Action rejected claims 49 and 50 under 35 USC §103(a) as being unpatentable over Pinchasik in view Richter. This is in error for reasons similar to those recited in Section 3 of this response. Specifically, neither Pinchasik nor Richter discloses a connecting strut extending between two end regions in which the end regions (as opposed to the connector as a whole) are closer to one strut of the strut pair than to any other strut.

**10. MPEP §§ 714.02 and 2163.06 Support for amendments**

The Office Action requested per MPEP §§ 714.02 and 2163.06 that any amendments to the disclosure including the claims should have their support specifically pointed out. No amendments have been made.

**11. List of co-pending applications with similar matter**

The Office Action requested a list of all co-pending applications that set forth similar subject matter to the present claims. The list of applications is as follows:

- ◆ Application Number 09/934,310, filed August 21, 2001
  - Attorney Docket Number S63.2-8429.US04
  - Published Application Number US-2002-0049493-A1
- ◆ Application Number 10/206,432, filed August 21, 2001

*Application No. 09/925562*  
*Page 16*

*Response*  
*Attorney Docket No. S63.2N-8429-US03*

- o Attorney Docket Number S63.2-8429.US05
- o Published Application Number US-2002-O1 93870-A1

**12. List of claims in co-pending applications with similar matter**

The Office Action requested a list of all co-pending claims of all co-pending applications that set forth similar subject matter to the present claims if the co-pending applications are not stored in the IFW (image format) system or are unpublished. As mentioned in the list in Section 11 of these remarks, both of the co-pending applications that set forth similar subject matter to the present claims are published.

**Conclusion**

Based on at least the foregoing remarks, Applicant respectfully submits this application is in condition for allowance. Withdrawal of the rejections against Claims 34-36, 47, and 49-59, is requested. Favorable consideration and prompt allowance these claims are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in better condition for allowance, Examiner is invited to contact Applicants' undersigned representative at the telephone number listed below.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

Date: June 28, 2006

By: 

Benjamin E. Carlsen  
Registration No.: 52697

6109 Blue Circle Drive, Suite 2000  
Minnetonka, MN 55343-9185  
Telephone: (952) 563-3000  
Facsimile: (952) 563-3001

f:\wpwork\bec\08429us03\_rsp\_20060628.doc